

Dr. Satyanarayana Sinha

Vs

M/s. S. Lal and Company (P) Ltd.

Civil Appeal No. 2572 of 1972

(P. Jagmohan Reddy, S. N. Dwivedi JJ)

10.09.1973

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The appellant was granted a mining lease on August 30, 1969 by the State of Bihar (Respondent 3) with the prior approval of the Central Government (Respondent 2) for winning a mineral known as Apatite over an area of 1999.634 acres. Respondent 1 filed a writ petition on September 15, 1969 challenging the lease on the ground that he had earlier on March 22, 1965, applied for a mining lease over an area of 280.62 acres in certain villages of Singhbhum District which was included in the lease granted to the appellant, but as no orders were passed by the State Government with the statutory period the application was deemed to have been rejected. He thereafter filed a revision petition to the Central Government which called for the comments of the State Government. The State Government intimated to the Central Government that it wanted to work the area itself and for that reason had in fact rejected all the applications for this area including that of the first respondent. On receipt of this comment, the Central Government rejected the revision petition of the first respondent.

2. It appears that the appellant had pursuant to an advertisement in the newspapers applied along with others for the grant of mining lease for phosphatic rock (Apatite) over an area of 4.1 sq. miles in village Khajurdari in Singhbhum District. But all the applications were rejected as the State Government had by then decided to work the phosphatic bearing areas in the public sector. Later, however, as 3rd respondent felt that such a venture could be better undertaken by a private party rather than the State Government in view of the dispersed nature of the deposits, whose concentrated and efficient supervision may not be possible through the public sector, it decided to release the area in question to be worked in the private sector. Accordingly permission was sought from the Central Government and an advertisement published in the newspapers for the general information of the interested parties who may be willing to set up a beneficiation plant for upgrading the low grade Apatite to ensure its use for the production of phosphatic fertiliser and who were capable of making an investment to the extent of Rs. 40 to 50 lakhs. The appellant who is reported to be financially sound submitted a scheme for setting up a beneficiation plant for upgrading the Apatite. In view of the financial solvency of the appellant his application was recommended to the Central Government. The Central Government accepted this recommendation and directed the grant of the mining lease in the following terms :

"The Central Government in the interest of mineral development, in exercise of the powers conferred by sub-rule (2) of Rule 58 of the Mineral Concession Rules, 1960, hereby authorise the State Government to grant mining lease for apatite over the area

to Dr. Satyanarayana Sinha without following the procedure laid down in sub-rule (1) of the said Rule 58 of the Mineral Concession Rules, 1960.

Further in exercise of the powers conferred by Section 31 of the Mines and Minerals (Regulation and Development) Act, 1957, the Central Government hereby authorise the State Government to grant mining lease to Dr. Sinha over the area in question which does not form a compact block.

The Central Government also, in exercise of the powers conferred by proviso to Section 6(1) of the Mines and Mineral (Regulation and Development) Act, 1957, authorise the State Government to grant mining lease for apatite over the areas to Dr. Sinha in excess of the limit of 10 square miles prescribed in Section 6(1) and (b) of the said Act."

3. Immediately on getting to know of the approval given by the Central Government to the grant of the mining lease to the appellant, the first respondent moved the State Government for a stay and though that application was rejected, he made several other attempts but without any success. The last revision application was filed on November 17, 1970 under Rule 54 of the Mineral Concession Rules - hereinafter referred to as 'the Rules' - before the 2nd respondent on which an order dated November 23, 1971 was passed. This order as disclosed by the 1st respondent in his supplementary affidavit shows that the Central Government had, in exercise of their revisional powers under Rule 55 of the Rules, set aside the orders of the State Government and directed it to give further consideration and pass appropriate order within a period of four months inasmuch as the State Government had not followed the correct procedure in dealing with the application of the 1st respondent.

4. At this stage we may point out that in the writ petition filed by the first respondent though the appellant was a party, it seems he did not appear and the proceeding was ex parte. The appellant's case is that as no notices were served on him, nor was there any proof of service as neither the covers in which the registered notices were sent nor the acknowledgment cards had been returned to the Court, he did not have an opportunity to be heard. No doubt the State of Bihar and the Central Government had opposed the petition, but the High Court came to the conclusion that the conditions required for relaxation of the Rules in special cases under Section 31 of the Mines and Minerals (Regulation and Development) Act, 1967 (hereinafter termed 'the Act') read with Rules 58 and 59 of the Rules, were not complied with while according its approval for the grant of the mining lease to the appellant. In this view it allowed the petition and quashed the lease in favour of the appellant.

5. Before us it is contended by the appellant's learned advocate that the appellant did not have an opportunity of urging before the Court that the writ petition filed by the first respondent was not maintainable, because he is not a person aggrieved as the area for which the first respondent had made an application for the grant of mining lease was not included in the area granted to the appellant. He further contends that reasons were given by the State of Bihar while recommending the grant of the lease to the Central Government, which reasons, at any rate one of them as is evident from the order of the Central Government, were approved. There is, according to him, no infringement of the provisions of Section 31 of the Act read with Rules 58 and 59 of the Rules.

6. The learned Solicitor-General on behalf of the Central Government supports the grant of the mining lease to the appellant on the ground that Rule 59 of the Rules is not applicable to the facts of this case inasmuch as the 3rd respondent had not taken any firm decision to reserve the area granted

to the appellant, which is a necessary condition of the applicability of that rule. If that rule did not apply then he submits the procedure prescribed in Rule 58 which is referred to therein need not be complied with. He further submits that even if Rule 59 is applicable, reasons have been recorded by the Central Government for relaxing the Rules as required in Section 31 of the Act.

7. In so far as the 3rd respondent - the State of Bihar - is concerned, there has been a volte-face in its stand before us. After having called for the applications and recommended the lease in favour of the appellant, and after having placed him in a position where he had to incur huge expense, it now wants to contend that the grant of the lease is invalid. Even the first respondent, once he found that the area for which he applied for a lease was not included in the appellant's lease, seems to have preferred to remain absent in the case, but the State Government wants to challenge the validity of the lease which it did not do before the High Court.

8. There is no doubt, as the High Court has pointed out, that where by relaxing the Rules the Central Government intends to authorise in any case the grant, renewal or transfer of any prospecting licence or mining lease, or the working of any mine for the purpose of searching for or winning any mineral, on terms and conditions different from those laid down in the Rules made under Section 13 of the Act, it can do so for reasons to be recorded in writing. Whether any such reasons can be said to have been recorded in the order authorising the grant of the lease on terms and conditions different from those laid down in the Rules made under Section 13 of the Act need not concern us in this case, because, in our view, as the writ petition has been filed by a person who is not the person aggrieved, it is not maintainable.

9. As already pointed out it is admitted by Respondents 2 and 3 that the application made by the first respondent was not in respect of the area which is granted to the appellant and consequently the first respondent had no interest in the subject-matter of the lease. Even though this contention was not urged before the High Court, and in the circumstances adverted to by us could not have been urged, as the appellant did not appear, this Court in an appeal cannot only determine the soundness of the decision, but has jurisdiction to determine any point raised before it, such as whether the appeal is competent, whether a party has locus standi to present the petition and whether the petition is maintainable etc. See *Ebrahim Aboobakar and Another v. Custodian General of Evacuee Property* (1952 SCR 696 : AIR 1952 SC 319 : 1952 SCJ 483.). In *Chiranjit Lal Chowdhuri v. The Union of India* (1950 SCR 869 : AIR 1951 SC 23 : 1951 SCJ 70.), it was held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. In respect of the jurisdiction under Article 226 of the Constitution it was laid down in *The State of Orissa v. Madan Gopal Rungta* (1952 SCR 28 : AIR 1952 SC 12 : 1951 SCJ 764.), that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 220 of the Constitution. The right to which this Court had adverted as being the foundation for exercising the jurisdiction under Article 32 or Article 226 of the Constitution, according to *The Calcutta Gas Company (Proprietary) Ltd. v. The State of West Bengal and Others* (1962 Supp 3 SCR 1 : AIR 1962 SC 1044 : (1963) 1 SCJ 106.), is ordinarily the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. Subba Rao, J., as he then was, observed in that case :

"Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part II or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the Court seeking a relief

thereunder."

After citing the above passage in *Godde Venkateswara Rao v. Government of Andhra Pradesh and Others* ((1966) 2 SCR 172 : AIR 1966 SC 828.), the learned Judge who delivered the judgment in this case also observed at p. 181 :

"A personal right need not be in respect of a proprietary interest; it can also relate to an interest of a trustee. That apart, in exceptional cases, as the expression 'ordinary' indicates, as person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof."

In respect of persons who are strangers and who seek to invoke the jurisdiction of the High Court or of this Court, difficulty sometimes arises because of the nature and extent of the right or interest which is said to have been infringed, and whether the infringement in some way affects such persons. On this aspect there is no clear enunciation of principles on which the Court will exercise its jurisdiction.

10. In England also the Courts have taken the view that when the application is made by a party or by a person aggrieved the Court will intervene *ex debito justitiae*, in justice to the applicant, and when it is made by a stranger the Court considers whether the public interest demands its intervention. In either case it is a matter which rests ultimately in the discretion of the Court : (See *R. v. Thames Magistrates' Court, ex. p. Greenbaum*) ((1957) 55 LGR 129 (Extracted in *Yardley* : *Source Book of English Administrative Law*, 1970, p. 228.).

11. In this case, however, the first respondent has not challenged the grant of the lease on the ground of *ex debito justitiae* but has done so on the ground of a direct infringement of his right to be granted a mining lease over 280.62 acres for which the appellant was given a lease along with other area. Since it is now found that no such right of the first respondent has been affected, he has no *locus standi*. He is neither a party nor a person aggrieved or affected and consequently his writ petition in the High Court is not maintainable.

12. On this short ground, this appeal will be allowed and the writ petition filed by the first respondent in the High Court dismissed. The appellant will have his costs only against the State of Bihar.

</html